

ESTTA Tracking number: **ESTTA186966**

Filing date: **01/16/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	MagGraceliaChiurazzi, c/o Devi Kroell Inc.
Granted to Date of previous extension	01/16/2008
Address	670 Broadway - Suite 506 New York, NY 10012 UNITED STATES
Attorney information	Barry G. Magidoff, Esq. Greenberg Traurig, LLP 200 Park Avenue New York, NY 10166 UNITED STATES magidoffb@gtlaw.com

Applicant Information

Application No	78448783	Publication date	09/18/2007
Opposition Filing Date	01/16/2008	Opposition Period Ends	01/16/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	J.N. Alvit Canada Ltd 102 - 202, 8277, 129 Street Surrey B.C. Canada V3W0A6 Surrey, British Columbia, V3W0A6 CANADA		

Goods/Services Affected by Opposition

Class 025.

All goods and services in the class are opposed, namely: Clothing, namely women's and men's wearing apparel, namely pants, dresses, knitted tops, shirts, skirts, sweaters, suits, blouses, shorts, culottes, t-shirts, jackets, jumpers, coats, camisoles, tank tops, cardigans, vests, knickers, sweatshirts, jogging suits, underwear, robes, mittens, nightgowns, night shirts, pyjamas, bathrobes, dressing gowns, sweatpants, sweat shorts, sweat suits, and coveralls, overalls, jumpers; denim wear, namely shirts, blouses, jeans, skirts, shorts, jackets, jumpsuits, and culottes; raincoats, ski jackets; outerwear namely winter coats, jackets, sports jackets, ski jackets, parkas and wind cheaters; headwear namely, hats, visors, neck tubes, headscarves and earmuffs; footwear namely shoes, sandals, slippers, runners and boots

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3168893	Application Date	02/17/2005
Registration Date	11/07/2006	Foreign Priority Date	08/20/2004
Word Mark	DEVI KROELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: Precious metals and their alloys, namely gold, platinum, silver, titanium, and copper; jewellery; precious stones; horological and chronometrical instruments</p> <p>Class 018. First use: Leather and imitations of leather, and goods made of these materials, namely handbags, bags, small leather goods, namely wallets, key chain holders, travel accessories, namely make-up bags sold empty, small travelling bags for carrying personal care items, small travelling bags for carrying body care items, small travelling bags for carrying personal hygiene items; pouches, straps, bands, animal skins, animal hides trunks, travelling bags, umbrellas, parasols and walking sticks; whips, harness and saddlery</p> <p>Class 025. First use: Clothing, namely, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests; knitwear, namely pants, shirts, skirts, tops, sweaters, gloves, belts, scarves, head bands, neck bands, wrist bands; cardigans; suits; blazers; turtlenecks; long sleeves tops; short sleeves tops; no sleeves tops; tops; woven shirts; t-shirts; bottoms; trousers; jeans; denim; skirts; legwear, namely, tights, pantyhose, stockings, thigh highs; leg warmers; socks; chaps; undergarments; sleepwear; dresses; blouses; evening dresses; bow ties; ties; suspenders; sports wear, namely yoga outfits, jogging outfits, gym suits, exercise outfits, riding outfits, sweatsuits; footwear; headgear, namely hats, caps, headwear, headbands, berets, head scarves, ear muffs; leather and imitation of leather clothing, namely gloves, belts, scarves, head bands, neck bands, wrist bands, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests, pants, shirts, tops, sweaters, cardigans, suits, blazers, turtlenecks, long sleeves tops, short sleeves tops, no sleeves tops, tops, bottoms, trousers, skirts, leg warmers, chaps, undergarments, sleepwear, dresses, blouses, evening dresses, evening suits, bow ties, ties, suspenders, sportswear, namely yoga outfits, jogging outfits, exercise outfits, riding outfits</p>		

Attachments	79012748#TMSN.jpeg (1 page)(bytes) OppJNALvit.pdf (14 pages)(443023 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/magidoffb/
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Name	Barry G. Magidoff, Esq.
Date	01/16/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: **U.S. Application Serial No. 78448783**

Mark: **DEVI**

Published: September 18, 2007

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Mag. Gracelia Chiurazzi

Opposition No.

Opposer,

NOTICE OF OPPOSITION

-against-

J.N. Alvit Canada Ltd

Applicant.

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Sirs:

Reference is made to Application Serial No. 78448783, published in the Official Gazette of the United States Patent and Trademark Office on September 18, 2007 and owned by J.N. ALVIT CANADA LTD (hereinafter, "Applicant"), for DEVI (the "DEVI Trademark"), in Class 025 for "Clothing, namely women's and men's wearing apparel, namely pants, dresses, knitted tops, shirts, skirts, sweaters, suits, blouses, shorts, culottes, t-shirts, jackets, jumpers, coats, camisoles, tank tops, cardigans, vests, knickers, sweatshirts, jogging suits, underwear, robes, mittens, nightgowns, night shirts, pajamas, bathrobes, dressing gowns, sweatpants, sweat shorts, sweat suits, and coveralls, overalls, jumpers; denim wear, namely shirts, blouses, jeans, skirts, shorts, jackets, jumpsuits, and culottes; raincoats, ski jackets; outerwear namely winter coats, jackets, sports jackets, ski

jackets, parkas and wind cheaters; headwear namely, hats, visors, neck tubes, headscarves and earmuffs; footwear namely shoes, sandals, slippers, runners and boots”.

PARTIES

A. Applicant

Upon information and belief, Applicant is a Canadian Corporation with its principal place of business at 102 - 202, 8277, 129 Street Surrey B.C. Canada V3W0A6 Surrey, British Columbia CANADA V3W0A6.

B. Opposer

Opposer, Mag. Gracelia Chiurazzi, (hereinafter, “Opposer”), is an individual resident in New York, who does business under the name Devi Kroell, and has a principal place of business c/o Devi Kroell Inc. 670 Broadway - Suite 506 New York, NEW YORK 10012.

Opposer believes it will be damaged by registration of Applicant’s DEVI Trademark in International Class 025, and hereby opposes same in this class.

GROUND FOR OPPOSITION

1. Applicant filed its application on July 9, 2004, seeking to register the DEVI Trademark in International Class 025.

2. Opposer is the owner of the following valid and subsisting United States Trademark registration and application (the “DEVI KROELL Trademark”), for the goods described below. Printouts from the Patent and Trademark Office website showing proof of this registration are annexed as Exhibit A to this Notice of Opposition:

DEVI KROELL, filed 2004-08-20, Registered on 2006-11-07, as Reg. No. 3168893, in International Class: 018, for Leather and imitations of leather, and goods

made of these materials, namely handbags, bags, small leather goods, namely wallets, key chain holders, travel accessories, namely make-up bags sold empty, small traveling bags for carrying personal care items, small traveling bags for carrying body care items, small traveling bags for carrying personal hygiene items; pouches, straps, bands, animal skins, animal hides trunks, traveling bags, umbrellas, parasols and walking sticks; whips, harness and saddlery, and

in International Class: 025, for Clothing, namely, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests; knitwear, namely pants, shirts, skirts, tops, sweaters, gloves, belts, scarves, head bands, neck bands, wrist bands; cardigans; suits; blazers; turtlenecks; long sleeves tops; short sleeves tops; no sleeves tops; tops; woven shirts; t-shirts; bottoms; trousers; jeans; denim; skirts; legwear, namely, tights, pantyhose, stockings, thigh highs; leg warmers; socks; chaps; undergarments; sleepwear; dresses; blouses; evening dresses; bow ties; ties; suspenders; sports wear, namely yoga outfits, jogging outfits, gym suits, exercise outfits, riding outfits, sweat suits; footwear; headgear, namely hats, caps, headwear, headbands, berets, head scarves, ear muffs; leather and imitation of leather clothing, namely gloves, belts, scarves, head bands, neck bands, wrist bands, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests, pants, shirts, tops, sweaters, cardigans, suits, blazers, turtlenecks, long sleeves tops, short sleeves tops, no sleeves tops, tops, bottoms, trousers, skirts, leg warmers, chaps, undergarments, sleepwear, dresses, blouses, evening dresses, evening suits, bow ties, ties, suspenders, sportswear, namely yoga outfits, jogging outfits, exercise outfits, riding outfits; and

DEVI KROELL, filed August 7, 2007, under application Serial No. 77249205, in International Class: 003, for Personal care products, namely, lip balms, conditioners, body mists, shampoos, soaps, creme rinses, skin toners, skin lotions; bath and body gels, facial cremes, facial and body lotions, hand lotions, powders, deodorants, soaps, shaving cremes, facial cleansers, skin serums, and liquid soaps; and Cosmetics, namely, lipsticks, mascaras, foundations, eyeliner, eye shadow, cheek color, and concealer.

3. The registered DEVI KROELL Trademark listed above is and has become a valuable asset of Opposer, with extremely valuable goodwill and a valuable reputation for representing a source of high quality luxury goods. Opposer has used the DEVI KROELL Trademark in commerce continuously since at least as early as February of 2004, in connection with the goods specified above in the DEVI KROELL registration. Opposer has expended considerable time, effort and resources to develop, advertise, market and sell goods bearing the DEVI KROELL Trademarks as a luxury brand.

4. Opposer's continuing, prominent usage of its DEVI KROELL Trademarks has generated goodwill and widespread consumer recognition for this mark as identifying exclusively Opposer and its products.

5. Applicant's DEVI Trademark is intended for use in the clothing product field, as indicated, and incorporates at least a significant portion of and will play upon Opposer's DEVI KROELL Trademark.

6. The goods covered by Opposer's DEVI KROELL Trademarks include clothing products and are at least similar, and in many cases identical to the goods contained in Application Serial No. 78448783, on which the mark is intended to be used.

COUNT I

LIKELIHOOD OF CONFUSION

7. Opposer repeats and re-alleges each and every allegation set forth in paragraphs 1 through 6 herein.

8. The DEVI Trademark proposed for registration by Applicant, incorporates and will play upon Opposer's DEVI KROELL Trademarks.

9. The DEVI Trademark proposed for registration by Applicant is confusingly similar to Opposer's DEVI KROELL Trademarks, rendering them similar in sound, sight and overall connotation, being Opposer's first name.

10. Applicant's DEVI Trademark is intended to be used on identical types of goods in the same market, and/or are to be sold in the same channels of trade as the goods offered by Opposer under its DEVI KROELL Trademarks.

11. If Applicant is permitted to register and use its DEVI Trademark, as specified in its application, confusion in trade and in the minds of the public resulting in injury to the Opposer would likely result. Persons familiar with Opposer's mark would likely buy Applicant's goods as and for products made and sold by Opposer or at least believe Applicant's products were sanctioned, authorized, licensed by or related to Opposer. Furthermore, any defect, objection or fault found with Applicant's products marketed under its mark would likely reflect upon and injure the luxury and quality reputation Opposer has established with respect to the goods sold under its aforementioned mark.

12. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

COUNT II

DILUTION

13. Opposer repeats and re-alleges each and every allegation set forth in paragraphs 1 through 6, 8, 11 and 12 herein.

14. Opposer will be damaged by the proposed use and registration by Applicant of the DEVI Trademark in that the mark is substantially similar to Opposer's DEVI KROELL Trademarks and common law rights and is used in connection with goods and services at least similar and closely related to the goods and services offered to the public by Opposer, and are offered through the same channels of trade.

15. Through Opposer's extensive advertising and promotion, to the luxury trade, Opposer's DEVI KROELL Trademarks have become distinctive and famous in that field. Upon information and belief, Applicant has not yet begun use of the DEVI Trademark in the United States, and any use would begin well after Opposer's DEVI KROELL Trademarks became distinctive and famous as a luxury brand. Applicant's use of its DEVI Trademark is thus likely to tarnish the positive associations of Opposer's famous DEVI KROELL Trademarks. Thus, in addition, if Applicant were granted the registration herein opposed, it would cause dilution of the distinctive quality of Opposer's well-known DEVI KROELL Trademarks.

17. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

RELIEF REQUESTED

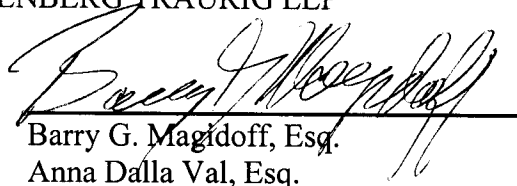
W H E R E F O R E, the Opposer prays that the Application Serial No. 78/448,783 be rejected, and that the registration of the mark therein, sought for the goods specified in International Class 25, be denied and refused in accordance with 15 U.S.C. §1052(d), and that this opposition be sustained.

Dated: New York, New York
January 16, 2008

Respectfully submitted,

GREENBERG TRAURIG LLP

By:

A handwritten signature in black ink, appearing to read "Barry G. Magidoff", is written over a horizontal line.

Barry G. Magidoff, Esq.

Anna Dalla Val, Esq.

Attorneys for Opposer

200 Park Avenue

New York, New York 10166

(212) 801-9200

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2008, I had served a copy of the foregoing Notice of Opposition, by First Class Mail, to JN Alvit Canada Ltd, 102-202, 8277, 129th Street, Surrey, British Columbia, V3W 0A6, Canada.



Barry G. Magidoff

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-01-16 12:59:11 ET

Serial Number: 79012748 Assignment Information Trademark Document Retrieval

Registration Number: 3168893

Mark

DEVI KROELL

(words only): DEVI KROELL

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2006-11-07

Filing Date: 2005-02-17

Transformed into a National Application: No

Registration Date: 2006-11-07

Register: Principal

Law Office Assigned: LAW OFFICE 110

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-11-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Mag. Gracelia CHIURAZZI

Address:

Mag. Gracelia CHIURAZZI
Gumpendorferstraße 63c / 2. Stock
A-1060 Wien
Austria

Legal Entity Type: Individual

Country of Citizenship: Austria

GOODS AND/OR SERVICES

International Class: 014

Class Status: Active

Precious metals and their alloys, namely gold, platinum, silver, titanium, and copper; jewellery; precious stones; horological and chronometrical instruments

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 018

Class Status: Active

Leather and imitations of leather, and goods made of these materials, namely handbags, bags, small leather goods, namely wallets, key chain holders, travel accessories, namely make-up bags sold empty, small travelling bags for carrying personal care items, small travelling bags for carrying body care items, small travelling bags for carrying personal hygiene items; pouches, straps, bands, animal skins, animal hides trunks, travelling bags, umbrellas, parasols and walking sticks; whips, harness and saddlery

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 025

Class Status: Active

Clothing, namely, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests; knitwear, namely pants, shirts, skirts, tops, sweaters, gloves, belts, scarves, head bands, neck bands, wrist bands; cardigans; suits; blazers; turtlenecks; long sleeves tops; short sleeves tops; no sleeves tops; tops; woven shirts; t-shirts; bottoms; trousers; jeans; denim; skirts; legwear, namely, tights, pantyhose, stockings, thigh highs; leg warmers; socks; chaps; undergarments; sleepwear; dresses; blouses; evening dresses; bow ties; ties; suspenders; sports wear, namely yoga outfits, jogging outfits, gym suits, exercise outfits, riding outfits, sweatsuits; footwear; headgear, namely hats, caps, headwear, headbands, berets, head scarves, ear muffs; leather and imitation of leather clothing, namely gloves, belts, scarves, head bands, neck bands, wrist bands, coats, ponchos, jackets, trench coats, wraps, capes, shrugs, sweaters, vests, pants, shirts, tops, sweaters, cardigans, suits, blazers, turtlenecks, long sleeves tops, short sleeves tops, no sleeves tops, tops, bottoms, trousers, skirts, leg warmers, chaps, undergarments, sleepwear, dresses, blouses, evening dresses, evening suits, bow ties, ties, suspenders, sportswear, namely yoga outfits, jogging outfits, exercise outfits, riding outfits

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Name Portrait Consent: The name DEVI KROELL identifies a living individual whose consent is of record.

MADRID PROTOCOL INFORMATION

International Registration Number: 0855198

International Registration Date: 2005-02-17

Priority Claimed: Yes

Date of Section 67 Priority Claim: 2004-08-20

International Registration Status: Request For Extension Of Protection Processed

Date of International Registration Status: 2005-08-25

International Registration Renewal Date: 2015-02-17

Notification of Designation Date: 2005-08-25
Date of Automatic Protection: 2007-02-25
Date International Registration Cancelled: (DATE NOT AVAILABLE)
First Refusal: Yes

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-06-16 - Final Disposition Notice Sent To IB
2007-06-16 - Final Disposition Processed
2007-06-06 - Final Disposition Notice Created, To Be Sent To IB
2006-11-07 - Registered - Principal Register
2006-08-22 - Published for opposition
2006-08-02 - Notice of publication
2006-06-29 - Law Office Publication Review Completed
2006-06-23 - Assigned To LIE
2006-06-17 - Approved for Pub - Principal Register (Initial exam)
2006-06-14 - Amendment From Applicant Entered
2006-05-26 - Communication received from applicant
2006-05-26 - PAPER RECEIVED
2006-05-24 - Examiner's amendment mailed
2006-05-23 - Examiners Amendment -Written
2005-11-25 - Final refusal mailed
2005-11-23 - Final Refusal Written
2005-11-17 - Amendment From Applicant Entered
2005-11-04 - Communication received from applicant
2005-11-04 - PAPER RECEIVED
2005-10-07 - Refusal Processed By IB
2005-09-22 - Non-Final Action Mailed - Refusal Sent To IB
2005-09-21 - Non-Final Action (Ib Refusal) Prepared For Review

2005-09-20 - Non-Final Action Written

2005-09-13 - Assigned To Examiner

2005-08-26 - New Application Entered In Tram

2005-08-25 - Sn Assigned For Sect 66a Appl From IB

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

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670 BROADWAY SUITE 506

NEW YORK NY 10012

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No assignment has been recorded at the USPTO

For Serial Number: 79012748

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1
Web interface last modified: April 20, 2007 v.2.0.1

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